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No. 578

IN THE
SUPREME COURT OF THE UNITED STATES

BESSIE DOPCUS, Intervenor,
Appellant,

—vs—

CITY OF WEST PALM BEACH, FLORIDA,

—vs—

STATE OF FLORIDA AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF SAID CITY OF WEST PALM BEACH, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN,
Appellees.

CASE NO. 26, 571

JURISDICTIONAL STATEMENT

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SUPREME COURT OF THE UNITED STATES

BESSIE DOPCUS, Intervenor,
Appellant,

—vs—

CITY OF WEST PALM BEACH, FLORIDA,

—vs—

STATE OF FLORIDA AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF SAID CITY OF WEST PALM BEACH, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN,
Appellees.

CASE NO. 26, 571

The Intervenor, BESSIE DOPCUS, is a resident, voter and freeholder of the City of West Palm Beach, Florida; the City of West Palm Beach, Florida, is a Municipal Corporation, created and existing under the Laws of the State of Florida; The State of Florida and the Taxpayers, Property Owners and Citizens of said City of West Palm Beach, including Non-Residents Owning Property or Subject to Taxation Therein, are joined as Appellees in this appeal.

JURISDICTIONAL STATEMENT

(a) Opinions were not rendered in the Court below. (Copies of Judgments are included as required by the rule.)

(b) (i) A proceeding to authorize and validate the purchase of the West Palm Beach Water Company, consisting of a water plant and approximately 17,000 acres of overflow swamp land; and to issue revenue bonds in the sum of EIGHT MILLION FIVE HUNDRED THOUSAND ($8,500,000.00) DOLLARS, payable in forty years, to obtain the money with which to make the purchase, was filed in the Circuit Court of Palm Beach County, Florida, by the City of West Palm Beach.

The said proceeding seeks authority to join this water plant and land purchase, with a sewer improvement project, to cost an additional $4,500,000.00; and to issue revenue bonds payable in forty years for this purpose. In the same proceeding the City also seeks authority to issue $1,250,000.00 in revenue bonds, to make improvements to the water plant, some of which have been started or completed.

In said proceeding the City seeks authority to issue and sell an unlimited number of revenue bonds, in unlimited amounts, from time to time in the future; to pay future debts and obligations and to have the same validated in this proceeding in addition to the $14,250,000.00 to be issued for the above purposes. Said bonds had not been issued or sold when this Notice of Appeal to the United States Supreme Court was filed.

Federal questions were raised in the Trial Court and in the Assignments of Error to the Supreme Court of Florida and were decided in the Final Decree from which this Appeal is taken.

The Intervenor attacks the validity of Ordinance #557 on the ground that it violates amended Section 6, Article

IX, of the Constitution; for the reason that the question of the purchase of the Water Company and the issue of the revenue bonds for the purpose of making the purchase, had not been submitted to vote as required by the said provision of the State Constitution.

The Intervenor further attacks the validity of Ordinance #557, on the ground that the Petition for Referendum, containing the names of more than 4,000 registered voters of the City of West Palm Beach, had been certified by the City Clerk as sufficient, before the said City Commission had passed a resolution to exercise the option to purchase the said water plant and lands. The Intervenor contended that the City Charter provides for a referendum on any measure, as set forth in Section 9, of the City Charter, but that the Commissioners had ignored the Petition.

The Intervenor attacks the validity of the City Ordinance, which she claims creates a lien on the sewage system which the City now owns and operates; to purchase and maintain the water plant, which the City seeks to acquire.

(ii) The Final Judgment of the Supreme Court of the State of Florida, dated the 7th day of October, 1955, and entered on the 7th day of October, 1955, affirmed the Final Judgment of the Circuit Court dated and entered on the 23rd day of June, 1955, recorded in Chancery Order Book 237, page 44, of the Palm Beach County Records. The Notice of Appeal to the Supreme Court of the United States was filed on the 25th day of October, 1955, with the Clerk of the Circuit Court in and for Palm Beach County; that the Record was in possession of said Clerk

of the Circuit Court when this Notice of Appeal was filed.

(iii) The statutory provisions believed to confer on the Court Jurisdiction of the Appeal, are set forth as follows:

(1) Section 237 of the Judicial Code, as amended, provides for a review in the Supreme Court of the United States, where the validity of a City Ordinance is sustained by the highest Court of the State.

(2) Section 6, Article IX of the State Constitution, requires the authorities to submit the question of the issue of bonds and the terms of the bonds to a vote of the freeholders.

(3) The Fourteenth Amendment to the Constitution of the United States, and more particularly that section of said Amendment which prohibits the taking of property without the due process of law, and prohibits a change in the rule of property which would invade vested rights and interests and which denies validity to any law which is repugnant to the Constitution and Laws of the United States.

(4) Section 697.01 of the Florida Statutes Annotated, which defines mortgages under the laws of the State of Florida.

(5) Section 2, Article V, of the State Constitution requires a consideration by all seven justices. The final judgment violates Section 2, Article V, of the State Constitution.

(6) Paragraph 1, Section 6, of the City Charter entitled The Referendum, and Paragraph 9, Section 6, City Charter.

(iv) Katzenberger v. Aberdeen, 121 U. S. 172, 7 S. Ct. 947, 30 L. Ed. 911;

Zane v. Hamilton County, 189 U. S. 370, 47 L. Ed. 853;

Commonwealth Bank v. Iola, 154 U. S. 617, 22 L. Ed. 463;

Lake County v. Graham, 130 U. S. 674, 32 L. Ed. 1065;

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Jennings v. New Bronwood School Dist. (1923) 156 Ga. 15, 118 S. E. 560;

Clay v. Austell School Dist. (1926) 35 Ga. App. 109, 132 S. E. 127;

Clover Leaf v. City of Jacksonville, 199 Southern 923, S. Ct. of Florida, 1940.

(v) Ordinance #557 contains more than one hundred pages. It is in the Record on Appeal. The pertinent text is set forth in the Appendix.

Section 6, Article IX of the State Constitution is set forth as follows:

> Bonds; state, county, municipal. — The Legislature shall have power to provide for issuing State bonds only for the purpose of repelling invasion or suppressing insurrection, and the Counties, Districts or Municipalities of the State of Florida shall have power to issue bonds only after the same shall have been approved by a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in such Counties, Districts or Municipalities shall participate, to be held in the manner to be prescribed by law; but the provisions of this act shall not apply to the refunding of bonds issued exclusively for the purpose of refunding of the bonds or the interest thereon of such Counties, Districts, or Municipalities.

Paragraph 1 of Section 6 of the City Charter entitled The Referendum, provides as follows:

1. Power of Referendum. The people shall have power at their option to approve or reject at the polls *any measure* passed by the Commission or submitted by the Commission to a vote of the electors; said power being known

as a referendum, which power shall be invoked and exercised as herein provided. And from paragraph 4, Section 6, we quote from the City Charter as follows: "Referendum Petition need not contain the text of the measure designated therein and of which repeal is sought and shall briefly describe the ordinance or part thereof sought to be repealed."

From paragraph 9 of Section 6 of the City Charter entitled Emergency Measures, we quote as follows: "Measures passed as emergency measures shall be subject to referendum like other measures, except that they shall not be suspended from going into effect *while referendum proceedings are pending.*"

Quoting from Section 2, Article V of the State Constitution:

> ". . . the determination of a State or Federal constitutional question wherein shall be brought into controversy the constitutionality of a Federal or State Statute, rule, regulation or municipal ordinance . . ." Must be heard by the full Court, including the Chief Justice.

Ordinance #557 and the Final Judgment from which this Appeal was taken, appeared to be an infringement on the Right of Local Self-Government. The Fourteenth Amendment to the Constitution of the United States "nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States, or which imperils them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." Dowling on Constitution Law.

(c) (1) The Intervenor filed an Answer in the Trial Court in which she denied all the material allegations set forth in the petition filed by the City of West Palm Beach. She contended that the purchase of the Water Company was not necessary and that the lands were being purchased for the purpose of allowing the City to engage in the real estate business, which was not a municipal purpose. She further contended that the City anticipated the issue of revenue certificates which would not inform the innocent buyers that some of their money would be used for the purchase of overflow swamp lands, which have little or no value. She contended on Appeal that the petitioner had failed to prove that the purchase of the Water Company was necessary or that any emergency existed in the City of West Palm Beach because the said City did not own the Water Company.

The Intervenor further contended that the question of the purchase of the Water Company should have been submitted to a vote of the freeholders of West Palm Beach by virtue of Section 6, Article IX of the State Constitution. She further contended that 4,000 citizens had signed a valid petition for a Referendum and the question of the purchase of the Water Company and the issue of revenue bonds for its purchase, should have been submitted to a vote of the freeholders, as required by the City Charter. She contended that Ordinance #557 was unreasonable, arbitrary and confiscatory, and that it violated the Constitution and Laws of the United States. The Final Judgment from which this Appeal is taken denied all of said allegations.

The Intervenor contended that the Final Decree and Ordinance #557 would authorize the City to issue and sell revenue certificates in addition to the $14,250,000 pro-

vided for in said Ordinance, all of which would violate the amendment to Chapter 75 of the Florida Statutes Annotated.

The Intervenor contended that Ordinance #557 creates a mortgage lien on the water plant and lands to be acquired; and that the revenue bonds are not to be paid solely from the net revenues. Quoting from Section 710, pp 85, 86 — Ordinance #557 is set forth as follows:

> "The City covenants that, until the bonds issued hereunder and the interest thereon shall have been paid or provision for such payment shall have been made, and except as in this Ordinance otherwise permitted, it will not sell, lease or otherwise dispose of or encumber the Waterworks System or the Sewer System or any part thereof . . . The City may sell such other property forming part of the Waterworks System or the Sewer System . . . provided, however, that not less than twenty-five per centum (25%) of the proceeds of the sale of any real estate constituting a part of the Existing Waterworks System shall be deposited with the Trustee to the Credit of the Reserve Account in the Sinking Fund and the balance of such proceeds for Additional Improvements . . ."

(c) (2) The questions to be decided by this Court are set forth as follows:

1. Does Ordinance #557 violate Section 6, Article IX of the State Constitution?

2. Are the 4,000 petitioners who signed a petition for a Referendum on the question of the purchase of the Water Company entitled to a vote on this measure?

3. Would Ordinance #557 create a mortgage lien on

the water plant and lands to be acquired and, if so, would this require the matter to be submitted to a vote of the freeholders before it is legally authorized?

4. Is a City Ordinance valid which contains a provision which would authorize a City to issue revenue bonds in unlimited amounts, at future dates, to pay obligations which have not been incurred at the time the Ordinance was enacted?

5. Does Ordinance #557 comply with Chapter 75 of the Florida Statutes Annotated, and particularly that section which requires the number and amount of bonds to be fixed, as well as the rate of interest?

6. Does the City have the authority to purchase the water plant and lands and to issue revenue certificates payable from revenue only to pay for the same, when Section 710 of said Ordinance provides that when the lands are sold twenty-five per cent of the selling price must be paid into the fund for the payment of principal and interest on the revenue certificates and the retirement of the debt, and the balance of the selling price of said lands is to be deposited in a fund for improvements and repairs to said water plant?

7. Whether or not Ordinance #557 and the final decree of the State Court made and entered pursuant thereto, deprives the Intervenor of her property without due process of law within the meaning of the Fourteenth Amendment of the Constitution of the United States?

8. Whether or not Ordinance #557 and the final decree made and entered pursuant thereto, are repugnant to the Constitution and Laws of the United States, and also

an infringement on the Rights of Local Self-Government?

9. Whether or not a final decree by Division A of the Supreme Court of the State of Florida is valid when Section 2, Article V of the State Constitution provides for a hearing before the full Court, where the validity of an ordinance is drawn into the controversy and a constitutional question has been raised to be decided by the Court?

10. Is a City Ordinance a law of the State, within the meaning of Section 237 of the Judicial Code, as amended, which provides a review in the Supreme Court of the United States, where the validity of the law is sustained by the highest court of a state in which a decision in the suit can be had? (Rosalyn Zucht v. W. A. King, et al., 260 U. S. 174, 67 L. Ed. 194).

(d) The Intervenor filed an Answer in the Trial Court in this proceeding, in which she averred that Ordinance #557 violated the Constitution and Laws of the United States. An Answer was also filed by the State's Attorney on behalf of the Taxpayers and Property Owners and Citizens of West Palm Beach, in which he averred that certain provisions of said Ordinance would violate the Declaration of Rights of the State Constitution and would deprive persons of their property without due process of law. The Intervenor, on her own behalf, and the State's Attorney in behalf of the Taxpayers and Property Owners of the City raised the same Federal questions in their Assignments of Error on Appeal to the Supreme Court of Florida, and they reasserted the same Federal questions in their arguments before the Trial Court and the Supreme Court of the State of Florida. The said Federal

questions were considered by the Court and in paragraphs 7 and 8 of the Final Decree the Trial Judge had this to say:

> "... that the endorsement of said provisions will not deprive persons of their property without due process of law."

and further:

> "That the provisions of said Ordinance No. 557 for the exercise by the Trustee of the duties, obligations and trusts imposed upon it by said Ordinance are lawful and valid provisions fully authorized by law, and do not violate any provisions of the City Charter or any other law."

(i) A copy of the Final Decree of the Supreme Court of Florida which affirms the final decree of the Circuit Court in and for Palm Beach County, and a copy of said Final Decree of the Circuit Court, are appended hereto.

Respectfully submitted

.....

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IN THE SUPREME COURT OF FLORIDA
JUNE TERM, A. D. 1955

SPECIAL DIVISION A.

STATE OF FLORIDA, et al.,
and BESSIE DOPCUS, Intervenor,
Appellants,

—vs—

CITY OF WEST PALM BEACH,
FLORIDA,
Appellee.

CASE NO. 26,571

Opinion filed October 7, 1955

An Appeal from the Circuit Court for Palm Beach County, J. Fritz Gordon, Judge

Phil D. O'Connell, for Appellants

Peter J. Cunningham, for Intervenor

Burns, Middleton, Rogers & Farrell, for Appellee

PER CURIAM.

Affirmed.

TERRELL, Acting Chief Justice, THOMAS, ROBERTS and BUFORD, J. J., CONCUR.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR THE COUNTY OF PALM BEACH

CHANCERY NO. 34,180

CITY OF WEST PALM BEACH, FLORIDA,
Petitioner.

vs.

STATE OF FLORIDA AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS OF SAID CITY OF WEST PALM BEACH, INCLUDING NONRESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN,
Respondents.

VALIDATION OF $14,250,000 WATER AND SEWER REVENUE BONDS SERIES A OF THE CITY OF WEST PALM BEACH, FLORIDA.

DECREE

This cause coming on to be heard on the 23rd day of June, 1955, at the hour of 3 o'clock P. M. of said day, at the Circuit Court Room in the Courthouse in the City of West Palm Beach, in the County of Palm Beach in said Circuit, upon the Petition of the City of West Palm Beach, Florida, for the validation of $14,250,000 Water and Sewer Revenue Bonds Series A of said City of West Palm Beach, dated as of July 1, 1955, pursuant to a Notice and Order heretofore issued by this Court requiring the Respondents to show cause at said time and place why the said Water and Sewer Revenue Bonds Series A should not be validated and confirmed as was prayed in said Petition, and it appearing that copies of said Notice and Order and of said Petition were served upon the State Attorney of the Fifteenth Judicial Circuit of Florida, as is required by

law, and that said Notice and Order was published as is required by law, and it further appearing that said State Attorney has filed an Answer as required by law, that Bessie Dopcus has also filed an Answer in this cause and no one else has appeared or intervened herein, and that the Court has jurisdiction of this cause and of the subject matter hereof and of the parties hereto, and evidence having been introduced and the cause submitted for consideration and decision, the Court, having heard and determined all of the questions of law and of fact in this cause, *finds the facts* as follows:

(a) All of the material allegations in said Petition for Validation are true, and the issuance of said $14,250,000 Water and Sewer Revenue Bonds Series A, dated as of July 1, 1955, was duly authorized by Ordinance No. 557 duly passed and adopted by the City Commission of the City of West Palm Beach (hereinafter sometimes called the "City Commission") on May 31, 1955.

(b) The City has never acquired or constructed any plant or system for supplying or distributing water within the City, and for many years the West Palm Beach Water Company (hereinafter sometimes called the "Company"), a private corporation organized and existing under the laws of the State of New Jersey and authorized to do business in the State of Florida, has owned and operated the waterworks system (hereinafter sometimes called the "Existing Waterworks System"), consisting of real estate, water rights, purification and pumping plants, reservoirs, mains, service connections, machinery, equipment and other property appurtenant thereto, which is supplying and distributing water in the City and in the Town of Palm Beach.

(c) The Company under date of November 24, 1954, granted to the City an option to purchase all and singular the real and personal property, tangible and intangible, of the Company, except certain property therein mentioned which is not necessary for the operation of the System, for the sum of Eight Million Five Hundred Thousand Dollars ($8,500,000) plus the actual cost of certain capital expenditures for additions and betterments and subject to the prorating of certain items of current expenses, which option was accepted by the City.

(d) The acquisition of the Existing Waterworks System and its operation under municipal ownership and control and the construction of the following extensions and improvements (hereinafter sometimes called the "Water Improvements") of the Existing Waterworks System are necessary to provide the City and its inhabitants with uninterrupted water supply and to preserve the peace, health, safety and property of the inhabitants of the City:

a 36-inch and 30-inch cast iron transmission main from the Filteration Plant south to Parker Avenue at Belvedere Road,

a 16-inch cast iron transmission main from the Parker Avenue storage tank south on Parker Avenue,

replacement of unlined galvanized iron pipe mains with 4-inch and 6-inch cast iron pipe, and

replacement of inadequate cast iron and cement-asbestos pipe mains.

(e) The City Commission has caused its engineers to make an estimate of the cost of constructing the Water Improvements, and according to such estimate it will be necessary to provide for the issuance of revenue bonds of

the City in the aggregate principal amount of Nine Million Seven Hundred Fifty Thousand Dollars, ($9,750,000) for paying the purchase price of the Existing Waterworks System and the cost of the Water Improvements.

(f) In the event of a substantial increase in the number of the inhabitants of the City or of an expansion in the corporate limits of the City, it will be necessary to construct additional extensions and improvements in the Existing Waterworks System (said System and the Water Improvements described above, together with all extensions, improvements, renewals and replacements thereof, being hereinafter sometimes collectively called the "Waterworks System"), and, to provide for financing the cost of any such additional extensions or improvements, it is advisable to make provision for the issuance of additional bonds on a parity with the Water and Sewer Revenue Bonds Series A hereinafter described.

(g) The City has heretofore constructed certain sanitary sewer facilities (hereinafter sometimes called the "Existing Sewers"), consisting of sanitary sewers, and of laterals, manholes, pumping stations, outlets and appurtenances, but the Existing Sewers are totally inadequate, there are large areas in the City which do not have sanitary sewer service, a large number of the Existing Sewers were constructed many years ago and for many years raw sewage has flowed directly or has been pumped into Lake Worth.

(h) The present situation constitutes a serious menace to the health of the inhabitants of the City and of the Town of Palm Beach and the surrounding territory and is detrimental to the business and commercial interests of the City, and there is urgent and imperative need for

the reconstruction and extension of the Existing Sewers, including the construction and reconstruction of sanitary sewer mains and laterals and the construction of a plant or system for the collection, treatment and disposal of sewage.

(i) The City Commission has caused to be made a comprehensive report setting forth (i) a brief description of the sewage disposal system the construction of which is deemed by the City Commission to be desirable and feasible to provide for the treatment and disposal of all sewage originating in the City of West Palm Beach, the approximate location thereof, the type of sewage treatment, and an estimate of the cost and of the revenues of such system, (ii) the sanitary sewers the construction or reconstruction of which is deemed necessary to protect the health of the inhabitants of the City, together with the approximate location thereof and an estimate of the cost of their construction or reconstruction, and (iii) an estimate of the additional cost and of the additional revenues in case it shall be determined to construct a larger sewage disposal system in order to provide for the treatment and disposal of all sewage originating in the Town of Palm Beach in addition to the sewage originating in the City of West Palm Beach.

(j) The construction of the sewage disposal system which is described in said report, consisting of intercepting sewers, force mains, sewage pumping stations, trunk and collector sewers, lateral sewers, a sewage treatment plant at the old incinerator site at 23rd Street (now owned by the City), and an outfall into Lake Worth, subject to such changes as may be found necessary in case it shall be determined to construct such larger sewage disposal sys-

tem and also subject to such additional changes in design, locations, sizes and materials as may be found necessary or desirable in the construction of said system, is desirable and feasible and necessary to protect the health of the inhabitants of the City (such system, together with all appurtenances and equipment and all property, rights, easements and franchises relating thereto and all extensions, improvements, renewals and replacements thereof, being hereinafter sometimes collectively called the "Sewage Disposal System").

(k) The construction of the sanitary sewers which are set forth in said report (hereinafter sometimes called the "Sewer Improvements"), subject to such changes as may be found necessary in the preparation of the detailed plans and specifications, is necessary to provide sanitary sewer facilities in large areas in the City, to provide a more efficient method of collecting sewage from the Existing Sewers and to connect the Existing Sewers with the Sewage Disposal System and is necessary to protect the health of the inhabitants of the City.

(l) The City Commission has caused an estimate of the cost of constructing the Sewage Disposal System and the Sewer Improvements to be made by its Consulting Engineers, and according to such estimate it will be necessary to provide for the issuance of revenue bonds of the City in the aggregate principal amount of Four Million Five Hundred Thousand Dollars ($4,500,000) for paying the cost of the Sewage Disposal System and the Sewer Improvements.

(m) In the event of a substantial increase in the number of the inhabitants of the City or of an expansion in the corporate limits of the City, it will be necessary to

construct additional sanitary sewers and also extensions and improvements of the Sewage Disposal System (the Existing Sewers, the Sewage Disposal System and the Sewer Improvements, together with any such additional sanitary sewers and all extensions, improvements, renewals and replacements of the Sewage Disposal System, being hereinafter sometimes collectively called the "Sewer System of the City" or the "Sewer System"), and, to provide for financing the cost of any such additional sanitary sewers and any such extensions and improvements of the Sewage Disposal System, it is advisable to make provision for the issuance of additional bonds on a parity with the Water and Sewer Revenue Bonds Series A hereinafter described.

(n) The City Commission has combined the Waterworks System and the Sewer System for financing purposes, as authorized by law.

(o) There is no meter that is practicable for use in the City of West Palm Beach for the measurement of sewage, there are a number of private wells in the City from which water is pumped not only for irrigation but also for household use, and the charging and collecting of rates, fees and other charges for the use of, and for the services and facilities furnished or to be furnished by, the Sewage Disposal System based or computed upon the number and kind of plumbing fixtures in use in the premises connected with the Sewer System is a proper, just and equitable method of charging for such use of the Sewage Disposal System.

(p) The City Commission has found and determined (a) the estimated cost of acquiring the Existing Waterworks System and of constructing the Water Improve-

ments, (b) the estimated annual revenues of the Waterworks System, and (c) the estimated annual cost of maintaining, repairing and operating the Waterworks System, and it appears from such estimates that the annual revenues of the Waterworks System will be sufficient to pay such cost of maintenance, repair and operation and the interest on and the principal of that amount of the bonds to be issued initially under said Ordinance No. 557 for paying such cost of acquiring the Existing Waterworks System and of constructing the Water Improvements as such interest and principal shall become due.

(q) The City Commission has also found and determined (a) the estimated cost of the Sewage Disposal System and of the Sewer Improvements, (b) the estimated annual revenues of the Sewage Disposal System, and (c) the estimated annual cost of maintaining, repairing and operating the Sewer System, and it appears from such estimates that the annual revenues of the Sewage Disposal System will be sufficient to pay such cost of maintenance, repair and operation and the interest on and the principal of that amount of the bonds to be issued initially under said Ordinance No. 557 for paying the cost of the Sewage Disposal System and the Sewer Improvements as such interest and principal shall become due.

(r) Under the authority of the City Charter, as amended, the City Commission, at the adjourned regular meeting duly held on May 31, 1955, duly passed and adopted Ordinance No. 557 entitled:

"AN ORDINANCE AUTHORIZING THE ACQUISITION OF THE EXISTING WATERWORKS SYSTEM WHICH IS SUPPLYING AND DISTRIBUTING WATER IN THE CITY OF WEST PALM

BEACH AND THE TOWN OF PALM BEACH AND THE CONSTRUCTION OF EXTENSIONS AND IMPROVEMENTS OF SAID SYSTEM; AUTHORIZING THE CONSTRUCTION OF A SEWAGE DISPOSAL SYSTEM AND SANITARY SEWERS; AUTHORIZING THE ISSUANCE, UNDER THE PROVISIONS OF THE CITY CHARTER, OF WATER AND SEWER REVENUE BONDS OF THE CITY, DESIGNATED 'WATER AND SEWER REVENUE BONDS SERIES A', PAYABLE SOLELY FROM REVENUES, TO PROVIDE FUNDS FOR PAYING THE COST OF SUCH ACQUISITION AND CONSTRUCTION; PROVIDING FOR THE ISSUANCE OF ADDITIONAL WATER AND SEWER REVENUE BONDS FOR PAYING THE COST OF ADDITIONAL EXTENSIONS AND IMPROVEMENTS OF THE WATERWORKS SYSTEM AND THE SEWER SYSTEM; PROVIDING THAT SUCH WATER AND SEWER REVENUE BONDS SHALL NOT CONSTITUTE A DEBT OF THE CITY OR A PLEDGE OF ITS FAITH AND CREDIT; REQUIRING CONNECTIONS WITH THE SEWER SYSTEM OF THE CITY; PROVIDING FOR THE COLLECTION OF WATER RATES AND RATES, FEES AND CHARGES FOR THE USE OF THE SERVICES AND FACILITIES OF THE SEWAGE DISPOSAL SYSTEM, AND FOR THE CREATION OF CERTAIN SPECIAL BONDS; PLEDGING TO THE PAYMENT OF THE PRINCIPAL OF AND THE INTEREST ON SUCH WATER AND SEWER REVENUE BONDS CERTAIN REVENUES OF THE WATERWORKS AND SEWAGE DISPOSAL SYSTEMS; SETTING FORTH THE RIGHTS AND REMEDIES OF THE HOLDERS OF SUCH BONDS; AND DECLARING AN EMERGENCY."

Said Ordinance No. 557 authorizes the acquisition of the Existing Waterworks System and the construction of

the Water Improvements, the Sewage Disposal System and the Sewer Improvements referred to above and the issuance of revenue bonds of the City to be designated "Water and Sewer Revenue Bonds Series A", in the aggregate principal amount of Fourteen Million Two Hundred Fifty Thousand Dollars ($14,250,000) for the purpose of providing funds for paying the cost of the Existing Waterworks System, the Water Improvements, the Sewage Disposal System and the Sewer Improvements.

Said Ordinance No. 557 also provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional bonds for the purpose of paying all or a part of the cost of necessary extensions or improvements of the Waterworks System or of the Sewer System or of both systems and for the purpose of refunding any bonds issued by the City under the provisions of said Ordinance.

(s) Said Ordinance No. 557, in accordance with and as required by Section 12 of the City Charter, provides for the fixing and collecting by the City of rates, fees and charges for water furnished by the Waterworks System and for the use of, and for the services and facilities furnished by, the Sewage Disposal System which will be sufficient at all times to pay the cost of maintaining, repairing and operating the Waterworks System and the Sewer System, to pay the principal of and the interest on all bonds issued under the provisions of said Ordinance and then outstanding as the same shall become due and payable, and to provide reserves for such purposes. Said Ordinance provides for the creation of a special fund designated "West Palm Beach Water

and Sewer Revenue Bonds Interest and Sinking Fund", which special fund is pledged to and charged with the payment of the principal of and the interest on all bonds issued under the provisions of said Ordinance, and also provides for the deposit to the credit of said special fund of a sufficient amount of the revenues of the Waterworks System and the Sewage Disposal System, over and above such costs of maintenance, repair and operation and reserves for such purposes, to pay the principal of and the interest on all bonds issued under the provisions of said Ordinance and then outstanding as the same shall become due and to create and maintain a reserve therefor.

As Conclusions of Law from the foregoing facts, the Court finds:

(1) That the City is governed by and is acting under a Charter granted by the Legislature of the State of Florida, being Chapter 24981, Special Laws of Florida, 1947, as amended and supplemented, and the City Commission is the board or body in which the general legislative powers of the City are vested.

(2) That Section 12 of the City Charter fully authorizes the acquisition by the City of the Existing Waterworks System and the construction of the Water Improvements, the Sewage Disposal System and the Sewer Improvements as provided by said Ordinance No. 557, and the issuance of said $14,250,000 Water and Sewer Revenue Bonds Series A of the City of West Palm Beach in the manner and form and having the details provided in said Ordinance No. 557, for the purpose of providing funds for paying the cost of the Existing Waterworks System, the Water Improvements, the Sewage Disposal System and the Sewer Improvements.

(3) That said Ordinance No. 557 was properly adopted by the City Commission of the City of West Palm Beach and is sufficient in form and in substance to authorize the issuance of said $14,250,000 Water and Sewer Revenue Bonds Series A in the manner and form and for the purposes provided in said Ordinance No. 557.

(4) That the schedule of rates for water furnished by the Waterworks System, including the service charges, connection charges and meter rate, which is set forth in Section 501 of said Ordinance No. 557, is fair and equitable, and all of the provisions of said Section 501 are fully authorized by law and are in all respects validated and confirmed.

(5) That the charging and collecting of rates, fees and other charges for the use of the Sewage Disposal System, based or computed upon the number and kind of plumbing fixtures in use in the premises connected with the Sewer System of the City, as provided by said Ordinance No. 557, is a proper, fair and equitable method of charging for such use of the Sewage Disposal System, and does not violate Sections 1 or 12 of the Declaration of Rights or Section 30 of Article XVI or any other provision of the Constitution of the State of Florida.

(6) That the rates, fees and charges (called the "sewer service charges") for the use of, and for the services and facilities furnished or to be furnished by, the Sewage Disposal System, to be paid by the owner, tenant or occupant of each lot or parcel of land which may be connected with or may use the Sewage Disposal System by or through any part of the Sewer System of the City, which are set forth in Section 502 of said Ordinance No. 557, are proper, fair and equitable, and all of the provisions of said Sec-

tion 502 are fully authorized by law and are in all respects validated and confirmed.

(7) That the provisions of said Section 502 of said Ordinance No. 557, which require the owner, tenant or occupant of each lot or parcel of land within the City which abuts upon a street or other public way containing a sanitary sewer served or which may be served by the Sewage Disposal System of the City and upon which lot or parcel a building shall be constructed for residential, commercial or industrial use, to connect such building with such sanitary sewer and to cease the use of any other method for the disposal of sewage, sewage waste or other polluting matter, do not violate Section 12 of the Declaration of Rights or any other provision of the Constitution of the State of Florida and that the enforcement of said provisions will not deprive persons of their property without due process of law.

(8) That the provisions of said Ordinance No. 557 for the exercise by the Trustee of the duties, obligations and trusts imposed upon it by said Ordinance are lawful and valid provisions fully authorized by law, and do not violate any provisions of the City Charter or any other law.

(9) That the provisions of Section 209, 210 and 211 of said Ordinance No. 557 which provide for the issuance of additional revenue bonds without the approval of a majority of the votes cast in an election in which a majority of the freeholders who are qualified electors residing in the City of West Palm Beach shall participate do not violate amended Section 6 of Article IX of the Constitution of the State of Florida.

(10) That all of the other terms, covenants and provisions of said Ordinance No. 557 are in accordance with law, are fully authorized by Section 12 of the City Charter, and are in all respects validated and confirmed.

(11) That the petition for a referendum which was filed with the City Clerk petitioning the City Commission to submit the question of the purchase of the Existing Waterworks System to a referendum of the freeholder electors of said City is insufficient in form and substance, is unauthorized by law and is of no legal effect, and that neither said Ordinance No. 557 nor any other proceeding which has been taken by the City Commission in connection with the acquisition of the Existing Waterworks System or the issuance of said $14,250,000 Water and Sewer Revenue Bonds Series A is subject to a referendum under the provisions of Section 6 of the City Charter.

(12) That in the event that the revenues of the Waterworks System and the Sewage Disposal System should be insufficient to pay the current expenses of maintenance, repair and operation and to meet the principal and interest requirements of the bonds issued under the provisions of said Ordinance No. 557, the taxpayers of the City will not be required to pay ad valorem taxes on their property to meet any such deficiency.

(13) That, as provided by said Ordinance No. 557 and by the terms of the bonds themselves, the bonds will not be deemed to constitute a debt of the City or a pledge of the faith and credit of the City, but will be payable solely from the special fund provided therefor from revenues, and the City will not be obligated to pay the

bonds or the interest thereon except from such special fund and the faith and credit of the City will not be pledged to the payment of such principal or interest, and the issuance of the bonds will not directly or indirectly or contingently obligate the City to levy any taxes whatever therefore or to make any appropriation for the payment of the bonds or the interest thereon except from such special fund.

(14) That this Court has jurisdiction to hear this cause and to enter a decision herein and is fully authorized by law to validate said Water and Sewer Revenue Bonds Series A and the proceedings therefor.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT said $14,250,000 Water and Sewer Revenue Bonds Series A of the City of West Palm Beach, Florida, hereinafter more particularly described, and the proceedings therefor be and the same are hereby validated and confirmed.

Said $14,250,000 Water and Sewer Revenue Bonds Series A are to be issued in the denomination of $1,000 each, numbered consecutively from 1 upwards, are to bear interest from their date until their payment at a rate or rates not exceeding five per centum (5%) per annum payable semi-annually on the 1st days of January and July in each year, and shall be stated to mature (in numerical order, lowest numbers first) on the 1st day of July in the following years and in the following amounts, respectively:

Year of Maturity	*Principal Amount*	*Year of Maturity*	*Principal Amount*
1958	$130,000	1977	$360,000
1959	135,000	1978	375,000
1960	150,000	1979	390,000
1961	165,000	1980	405,000
1962	175,000	1981	420,000
1963	185,000	1982	435,000
1964	195,000	1983	455,000
1965	210,000	1984	470,000
1966	225,000	1985	485,000
1967	240,000	1986	505,000
1968	250,000	1987	520,000
1969	260,000	1988	540,000
1970	280,000	1989	555,000
1971	300,000	1990	575,000
1972	310,000	1991	600,000
1973	320,000	1992	620,000
1974	330,000	1993	640,000
1975	340,000	1994	665,000
1976	350,000	1995	685,000

The bonds at the time outstanding which mature after July 1, 1960 may be redeemed prior to their respective maturities, at the option of the City, from any moneys that may be made available for such purpose, either in whole, on any date not earlier than July 1, 1960, or in part, in the inverse order of their maturities, on any interest payment date not earlier than July 1, 1960, at the principal amount of the bonds to be redeemed, together with the interest accrued thereon to the date fixed for redemption, plus a premium of 4% of such principal amount if redeemed on or prior to July 1, 1965, 3% if redeemed thereafter and on or prior to July 1, 1970, 2%

if redeemed thereafter and on or prior to July 1, 1975, 1% if redeemed thereafter and on or prior to July 1, 1980, ½ of 1% if redeemed thereafter and on or prior to July 1, 1985, and without premium if redeemed thereafter.

The bonds will be registerable as to principal alone and also as to both principal and interest and, if registered as to both principal and interest, may be reconverted into coupon bonds, in accordance with the provisions endorsed thereon and subject to the terms and conditions set forth in said Ordinance No. 557.

Both the principal of and the interest on the bonds will be payable in any coin or currency of the United States of America which, at the respective dates of payment thereof, is legal tender for the payment of public and private debts. The principal of the bonds, unless registered, and the interest on bonds not registered as to both principal and interest will be payable at a bank or trust company in the Borough of Manhattan, City and State of New York, which will hereafter be designated by the City Commission by resolution. Payment of the interest on the bonds to the maturity thereof will be made only upon presentation and surrender of the coupons, if any, representing such interest as the same respectively fall due; or, if any bond shall be registered as to both principal and interest, payment of such interest on any interest payment date will be made to the person appearing on the bond registration books of the City as the registered owner thereof, such interest to be paid by check or draft mailed to the registered owner at his address as it appears on such registration books. The principal of any bond registered as to principal alone or as to both principal and interest will be payable upon the presentation and surrender thereof at

the principal office of the Trustee under said Ordinance No. 557.

The bonds will be signed by the Mayor of the City, and the official seal of the City will be impressed on the bonds and attested by the City Clerk. The interest coupons to be attached to the bonds will be executed with the facsimile signature of the City Clerk. In case any officer whose signature or a fascimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The bonds and the interest coupons to be attached thereto, the certificate of authentication by the Trustee, and the provisions for registration and reconversion and the certificate of validation to be endorsed on the bonds will be, respectively, substantially in the forms set forth in said Ordinance No. 557.

DONE AND ORDERED in open Court in the Courthouse in the City of West Palm Beach, Florida, this 23rd day of June, 1955.

J. FRITZ GORDON
Judge of the Circuit Court of
the Fifteenth Judicial Circuit
of Florida.

Filed this 28th day of
June 1955 at 9:15 A. M.
and recorded in Chancery

Order Book No.....

at Page.....
Record Verified.

J. ALEX ARNETTE, Clerk

By.....D. C.

FILED
JAN 18 1956
HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

October Term, 1955

No. 578

BESSIE DOPCUS, Intervenor,

Appellant,

—v.—

CITY OF WEST PALM BEACH, FLORIDA, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

MOTION OF CITY OF WEST PALM BEACH, FLORIDA, APPELLEE, TO DISMISS APPEAL

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IN THE

Supreme Court of the United States

October Term, 1955

No. 578

BESSIE DOPCUS, Intervenor,

Appellant,

—v.—

CITY OF WEST PALM BEACH, FLORIDA, *et al.*,

Appellees.

MOTION OF CITY OF WEST PALM BEACH, FLORIDA, APPELLEE, TO DISMISS APPEAL

The City of West Palm Beach, Florida, Appellee in the above-entitled cause, moves to dismiss the appeal on the following grounds:

I. The Notice of Appeal Fails to Comply with the Requirements of Rule 10 of the Supreme Court.

Paragraph 1 of Rule 10 of the Supreme Court Rules provides that a notice of appeal must be filed in the form prescribed by said Rule.

(a) Appellant's notice of appeal fails to specify the statute under which the appeal to this Court is taken and, therefore, does not comply with paragraph 2(a) of said Rule 10.

(b) Appellant's notice of appeal is not concise and fails to express the questions presented by the appeal in the

terms and circumstances of the case and, therefore, does not comply with paragraph 2(c) of said Rule 10. The questions are stated with such undue generality that it is not possible to determine the precise questions which are sought to be presented.

Said paragraph 2(c) further provides that a failure to comply with these requirements will be a sufficient reason for dismissing the appeal.

For the Appellant's failure, as stated above, to comply with the requirements of said Rule 10, this appeal should be dismissed.

II. Appellant Fails to Present Any Grounds Establishing That the Federal Questions Are Substantial.

Appellant has made no attempt to comply with the requirements of paragraph 1(e) of Rule 15. Her Jurisdictional Statement fails to set forth the grounds upon which it is contended that the alleged federal questions are substantial.

For Appellant's failure to comply with the requirements of said paragraph 1(e) this appeal should be dismissed pursuant to the provisions of paragraph 1(a) of Rule 16.

III. No Substantial Federal Question Is Presented by the Attempted Appeal.

Appellant's Jurisdictional Statement sets forth on pages 9 to 11, inclusive, ten (10) questions to be decided by this Court. But a mere reading of these questions is sufficient

to show that no federal question whatever is presented or claimed under any of the questions with the exception of questions numbered 7 and 8. All of the other questions relate solely to matters arising under the laws and Constitution of the State of Florida, and there is no showing in her Jurisdictional Statement that the decision of the Supreme Court of Florida has deprived her of any right which is protected by the Constitution of the United States.

In such circumstances the decision of the Supreme Court of Florida is final and conclusive, and is binding on the federal courts. *Kovacs* v. *Cooper*, 336 U. S. 77, 84, 69 S. Ct. 448, 93 L. Ed. 513; *Knights of Pythias* v. *Meyer*, 265 U. S. 30, 32-33, 44 S. Ct. 432, 68 L. Ed. 885.

Question numbered 8 fails to state the particular provisions of the Constitution and laws of the United States which are violated. Question numbered 7 refers to the due process clause in the Fourteenth Amendment of the Constitution of the United States. But no where in the Jurisdictional Statement or in any pleadings filed by Intervenor in the courts of Florida is there any statement whatever of the grounds on which she claims that she has been deprived of any property without due process. There is no showing whatever that she has or will suffer any injury.

Appellant on page 5 of her Jurisdictional Statement under paragraph (iv) lists certain cases as sustaining the alleged jurisdiction of this Court to hear this appeal. Of the decisions of this Court so cited, not a single one involved appeal or certiorari from a state court; each such case was an appeal from an inferior federal court and involved an action by bondholders against a public entity to

collect on bonds or coupons, but in none of these cases had the validity of the bonds or coupons in question been passed upon by the state courts. None of these decisions has the remotest connection with any question presented in this attempted appeal.

The decisions of state courts cited by Appellant have no weight in determining whether there is jurisdiction in this Court to entertain this appeal.

There is no attempt in the Jurisdictional Statement to show the applicability of any of the cases cited by Appellant to any question presented in this attempted appeal or the reasons why the questions presented are so substantial as to require consideration by this Court.

WHEREFORE, the City of West Palm Beach, Florida, Appellee in the above-entitled cause, respectfully moves that the appeal herein be dismissed.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 578

BESSIE DOPCUS, Intervenor,
APPELLANT,
vs.
CITY OF WEST PALM BEACH, FLORIDA,
vs.
STATE OF FLORIDA AND THE TAXPAYERS, PROPERTY OWNERS AND CITIZENS, OF SAID CITY OF WEST PALM BEACH, INCLUDING NON-RESIDENTS OWNING PROPERTY OR SUBJECT TO TAXATION THEREIN,
APPELLEES.

} ON APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

The Appellant and Intervenor, BESSIE DOPCUS, contends that the Motion to Dismiss fails to set forth any error which would affect the substantial rights of the parties. Since the Appellee, THE CITY OF WEST PALM BEACH, concedes in said Motion that Federal questions were raised in the State Courts; considered and determined in the Final Decree from which this Appeal is taken; it is apparent that said Appellee has waived any further right or authority to question the jurisdiction of the United States Supreme Court to determine the questions involved, pursuant to Section 2106 of the Judicial Code.

2. The Motion to Dismiss fails to challenge the allegations set forth in paragraph 3 of the Jurisdictional Statement. The Supreme Court of the United States held in the case of People Ex Rel. Bryant v. Zimmerman, 278 U. S. 63, 73 L. ed. (Adv. 52) 49 Sup. Ct. Rep. 61, as follows:

> "There are various ways in which the validity of a state statute may be drawn in question on the ground that it is repugnant to the Constitution of the United States. No particular form of words or phrases is essential, but only that the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time. And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented.[2]"

3. For further authorities see County of Dixon v. Field, 111 U. S. 83; 28 L. Ed. 350; Chesebro v. Los Angeles County Flood Control Dist., 59 S. Ct. 622, 306 U. S. 459, 83 L. Ed. 921; Amoskeag National Bank v. Ottawa, Ill., 105 U. S. 667; 26 L. Ed. 1204; Hayes v. Holley Springs, 114 U. S. 120; 29 L. Ed. 81; 5 S. Ct. 785; William Hill, plaintiff in error v. Memphis, Mo., 134 U. S. 198; 33 L. Ed. 887; 10 S. Ct. 562.

4. The Motion to Dismiss, also has the effect of admitting the flagrant and arbitrary abuse of power exercised by the Appellee as set forth in the Jurisdictional Statement. The City admits that 4,000 registered voters, including the Appellant, were denied the right to petition the City government for a referendum before attempting to issue and sell Revenue Bonds in the sum of $8,500,000.00. The Appellant contends that she was denied the right to vote on this measure; and that this arbitrary and unreasonable authority exercised by the City is an infringement on the Rights of local self-government.

5. The Supreme Court in Kiegley v. Bench, etc., 89 p. (2d) 480, referred to the rights of the People to express themselves at the polls as,

> "Inherent in our Democracy. They are basic in representative government. They are fundamental in our Constitution, and safeguarded in our statutes. ... The prevailing opinion brushes them aside and recognizes in little appointive officers of the city dictatorial ideas in plain derogation of the organic Law."

6. Another State decision precisely in point is that of Dickson v. Hardy, 177 La. 447; 148 So. 674, held as follows:

> "Charter provision, authorizing submission of 'any proposed ordinance' to electorate of City, held not limited to legislative, as distinguished from administrative, ordinances."

7. The Appellee fails to challenge or deny the allegations set forth in paragraph 4, page 10, of the Jurisdictional Statement, where it is contended that the Ordinance and Final Decree would authorize the City to issue and sell an unlimited number of Revenue Bonds, in unlimited amounts in the future, in addition to the $14,250,000. These Revenue Bonds which would be issued in the future, would be in effect, allowing the State to emit bills of credit and would be a violation of the Constitution of the United States. This is unbridled authority. It is the usurpation of powers neither authorized by the State Constitution nor the Statutes. This authority to issue bonds in unlimited amounts and unlimited numbers in the future, would impair the obligations of the Bond Contracts represented by the issue of $14,250,000. If this were permitted these Bonds would become a lien on the City property and would injure the Appellant and other taxpayers.

8. The Appellee fails to challenge the allegations set forth in the 2nd paragraph on page 8 of the Jurisdictional Statement, and this has the effect of admitting that Section 6, Article IX of the State Constitution has been violated, and that the City Ordinance was unreasonable, arbitrary, confiscatory, and that it violated the Constitution and Laws of the United States. That a true copy of said amendment to the State Constitution is set forth on page 6 of the Jurisdictional Statement. Leading Florida decisions construing this Constitutional Amendment will be found on page 1 of the Jurisdictional Statement.

9. The United States Supreme Court held in the case of Amoskeag National Bank v. Ottawa, Ill., 105 U. S. 667; 26 L. Ed. 1204:

> "The construction uniformly given to the Constitution of a State by its highest court is binding on the courts of the U. S. as a rule of decision."

Judge Cooley, in his Constitutional Limitations, has this to say:

> "Acquiescence for no length of time can legalize a clear usurpation of powers where the people have plainly expressed their will and the Constitution has appointed judicial tribunals to enforce it."—7th Ed. p. 114.

See also Katzenberger v. Aberdeen, 121 U. S. 172, 7 S. Ct. 947, 30 L. Ed. 911.

10. In the Jurisdictional Statement the Intervenor contended that the Ordinance created a mortgage lien on the water plant and lands to be acquired. This would not be valid unless the question of the purchase and the issue of the Bonds was submitted to a vote of the freeholders. This is the taking of the Appellant's property without due process of law within the meaning of the

Fourteenth Amendment of the Constitution of the United States.

11. This same ordinance creates a lien on the sewage system of the City to obtain the funds with which to buy the water plant and lands. This is also the taking of property without due process of law within the meaning of the Fourteenth Amendment of the Constitution of the United States.

12. The Appellee has failed to challenge or reply to the matters set forth in Question 9 on page 11 of the Jurisdictional Statement. Here the Appellant denies that she was granted a hearing before the Supreme Court of the State of Florida within the meaning of Section 6, Article V of the State Constitution. She was entitled to a hearing before the full court of seven justices, including the Chief Justice, but this was denied notwithstanding that she had perfected her appeal to the Supreme Court of the State. The material quotation from this Constitutional provision is set forth on page 7 of the Jurisdictional Statement.

13. The Supreme Court of the United States held in the case of Leo M. Frank, Appt. v. Wheeler Mangum, Sheriff of Fulton County, Georgia, 237 U. S. 960, as follows:

> "Where the procedure in the Supreme Court of the state is a part of the court procedure; and where an appeal is allowed by law and the appellant takes the advantage of it, he is entitled to the due process of law."

Therefore, it is very apparent that the Appellant in this case was denied the due process of law by the refusal of the seven justices to hear this cause of action.

14. The Revenue Bonds to be issued and sold by the City do not disclose that some of the money is to be used for the purchase of land which is over-flow land, and which is to be purchased for the purpose of resale. Said bonds also fail to disclose the fact that the revenue from the Water Company would not be sufficient to maintain the Water Plant and pay off the Bonds. The issue of these bonds appears to be a scheme of financing which would be a violation of Title I of the Securities Act of 1933 as amended.

15. The Courts of Florida do not have authority to validate Revenue Bonds which are not a debt against the City, and therefore the procedure validating such Bonds is void. Chapter 75 Validation of Bonds; Procedure, includes only issues of certificates of indebtedness or bonded debt. That a true copy of Section 75.02 entitled "Petitioner" is set forth in the appendix.

16. It is further represented that if this appeal is not successful, the decree of the Supreme Court from which this appeal is taken, will become final and the Appellant will be injured and great harm will result because of the sale and distribution of said bonds.

WHEREFORE this cause is humbly submitted to the Supreme Court of the United States, to take such action as it may deem equitable and just.

Respectfully submitted,

.....

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West Palm Beach, Florida

APPENDIX

Chapter 75. Validation of Bonds; Procedure

Sec.
75.061. Application of §§ 75.05 and 75.06 as amended [New].

75.02 Petitioner

Any county, municipality, taxing district or other political district or subdivision of this state, including the governing body of any district established for the purpose of drainage, conservation or reclamation and including also state agencies, commissions and departments authorized by law to issue bonds may, if deemed expedient, determine its authority to incur bonded debt or issue certificates of indebtedness and the legality of all proceedings in connection therewith, including, in proper cases, any assessment of taxes levied or to be levied, the lien of such taxes, and of proceedings or other remedies for their collection. For such purpose a petition may be filed in the circuit court in such county or in the county in which such municipality or district, or any part thereof, may be located, against the State of Florida and the taxpayers, property owners and citizens of such county, municipality or district, including nonresidents owning property or subject to taxation therein. In proceedings for the validation of bonds or certificates of indebtedness issued by any of the state agencies, commissions or departments, such petition may be filed in the circuit court of the county in which the proceeds of such bond issue are to be expended, or in the circuit court of the county in which the seat of state government is situated, and such petition shall be brought against the State of Florida and the taxpayers, property owners and citizens thereof, including nonresidents owning property or subject to taxation therein. As amended Laws 1949, c. 25263, § 1.

Became a law without the approval of the Governor.

Filed in Office Secretary of State June 9, 1949.

No. 578. DOPCUS *v.* CITY OF WEST PALM BEACH ET AL. Appeal from the Supreme Court of Florida. *Per Curiam:* The motion to dismiss is granted and the appeal is dismissed for want of a substantial federal question. *Peter J. Cunningham* for appellant. *Egbert Beall, C. Robert Burns* and *Robie L. Mitchell* for appellees. Reported below: 82 So. 2d 756.